

89-551 (2)

NO.

Supreme Court, U.S.

FILED

AUG 28 1989

JOSEPH F. SPANIOL, JR.
CLERK

IN THE UNITED STATES SUPREME COURT

October term, 1989

GEORGE JUSTICE MOOR,

Petitioner,

v.

THE CITY OF AUBURN HILLS,
MAURICE JAMES NOLIN,

Respondents.

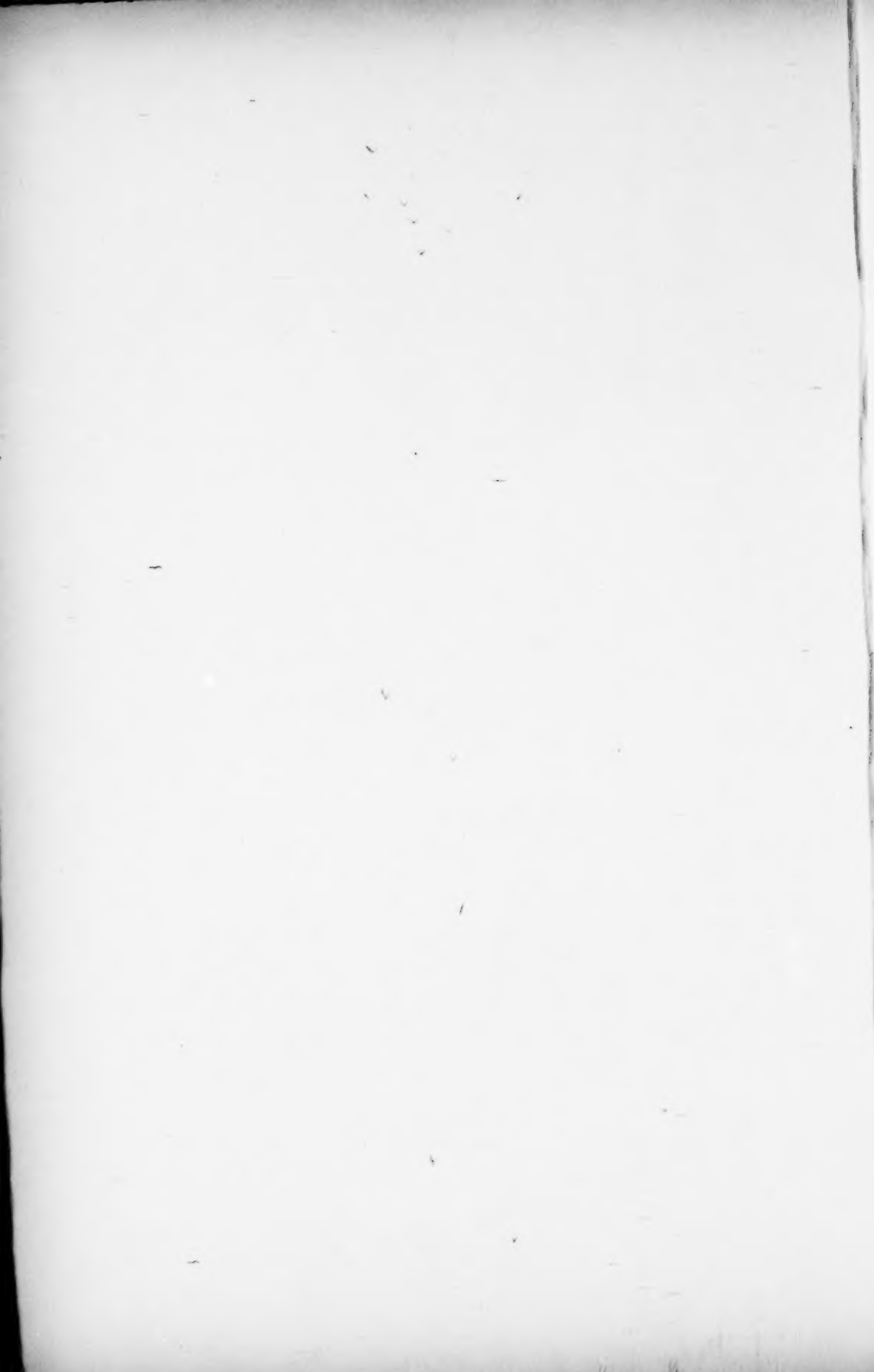
On writ of certiorari,
in the United States
Court of Appeals for
the sixth circuit

PETITION FOR WRIT OF CERTIORARI
APPENDIX WITH PROOF OF SERVICE

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FINDING OF FACTS

District Court Record Entry No. 108

Dated: May 27, 1988

Issuing court: UNITED STATES DISTRICT
COURT, EASTERN DISTRICT OF MICHIGAN,
SOUTHERN DIVISION

Caption:: GEORGE JUSTICE MOOR V CITY OF
AUBURN HILLS, et al

Case No.: 87CV71293DT

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*** Plaintiff alleges that on December 4, 1985 a complaint was filed with the City of Auburn Hills Police Department against his son. Officer Nolin was dispatched to the scene. Plaintiff thereafter arrived on the scene to provide his son with his wallet containing identification. When plaintiff identified himself to Nolin and asked why his son was being detained, Nolin allegedly ordered plaintiff to leave the scene so he could question plaintiff's son in private. ***. He apparently refused to leave and Nolin arrested him for disorderly conduct; i.e., interfering with a police officer during the performance of his duties

FINDING OF FACTS

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On December 19, 1985 plaintiff pleaded not guilty to the charge of being a disorderly person. Trial on the charge commenced on April 15, 1986 in the Fifty Second District Court. Nolin apparently testified that he did not order plaintiff from the scene until after plaintiff thwarted his attempt to question plaintiff's son. *** The jury found plaintiff guilty of interfering with a police officer during the performance of his duties. The Oakland County Circuit Court reversed the conviction on January 27, 1987.

CONCLUSIONS OF LAW

District Court Record Entry No. 24

Dated: July 13, 1987

Issuing Court: UNITED STATES DISTRICT
COURT EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

Caption: GEORGE JUSTICE MOOR V CITY OF
AUBURN HILLS, et al

Case No.: 87CV71239DT

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Plaintiff filed his first amended complaint in this action on April 27, 1987.

Count I of the complaint alleges that defendants City of Auburn Hills, *** and Maurice James Nolin III deprived plaintiff of rights secured under the United States Constitution. This claim is based on 42 U.S.C 1983 and serves to invoke the jurisdiction of this court.

CONCLUSIONS OF LAW

District Court Record Entry No. 108

Dated: May 27, 1988

Issuing court: UNITED STATES DISTRICT
COURT, EASTERN DISTRICT OF MICHIGAN,
SOUTHERN DIVISION

Caption:: GEORGE JUSTICE MOOR V CITY OF
AUBURN HILLS, et al

Case No.: 87CV71293DT

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*** There is no question that defendant in this matter acted under color of state law.

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Plaintiff also raises a substantive due process claim: i.e., that his fourth amendment right to be free from unreasonable search and seizure was violated by his arrest without probable cause. Before addressing the factual issue of probable cause, we must decide whether defendants are shielded by the doctrine of qualified immunity. ***

CONCLUSIONS OF LAW

The doctrine of qualified immunity protect an official's discretionary conduct where it "does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." *** The immunity "is pierced only if there clearly was not probable cause at the time the arrest was made. The officers must establish that they acted in good faith and had reasonable belief that their conduct was permissible." *** Plaintiff concedes in his complaint that he was ordered on at least two occasions to leave the site where Nolin was questioning his son and refused to do so. This fact alone establishes a good faith basis for Nolin's belief that he had probable cause to arrest plaintiff for interfering with a police officer. The jury's guilty verdict,

CONCLUSIONS OF LAW

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although overturned, also supports a finding of good faith. *** We conclude that Nolin is shielded by qualified immunity.

Plaintiff also alleges a claim under the eighth amendment. This claim presumably arises out of his allegations that he was frisked in public by Nolin and pushed into the back of a police car. *** Since plaintiff's conviction was reversed, his claim must be for deprivation of due process. *** This is not a case, however, which "fits the other prong of substantive due process -- official acts which 'may not take place no matter what procedural protections accompany them.'" *** The conduct alleged in the complaint although certainly not condonable, is not such that "shocks the conscience" of the court. This claim must also be dismissed.

OPINIONS OF STATE CRIMINAL PROCEEDINGS

District Court Record Entry No. 15

Dated: April 15, 1985

Issuing Court: STATE OF MICHIGAN, IN THE
DISTRICT COURT FOR THE 52/3 JUDICIAL
DISTRICT.

Caption: THE PEOPLE OF THE CITY OF AUBURN
HILLS V. GEORGE JUSTICE MOOR

Case No.: CR86-DA=3560-AR

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THE COURT: Based upon the jury ver-
dict, the court'll enter a judgemnt of
guilty in this case.

District Court Record Entry No. 41

Dated: Jan. 29, 1987

Issuing court: STATE OF MICHIGAN IN THE
OAKLAND COUNTY CIRCUIT COURT

Caption: PEOPLE OF AUBURN HILLS V GEORGE
JUSTICE MOOR

Case No.: 86-DA-3560-AR

This matter having come before the
Court upon appeal of Defendant George
Justice Moor, Plaintiff having appeared,
the parties having submitted briefs, oral
argument having been scheduled and conduct

OPINIONS OF STATE CRIMINAL PROCEEDINGS

ed, the Court having reviewed the briefs, heard the argument and rendered an opinion and the Court otherwise fully advised in the premises;

IT IS HEREBY ORDERED AND ADJUDGED that Defendant-Appellant GEORGE JUSTICE MOOR's conviction of June 6, 1989 for Disorderly Person is reversed and hereby set aside and held for naught.

JUDGEMENTS TO BE REVIEWED

District Court Record Entry No. 27

Dated: May 27, 1988

Issuing court: UNITED STATES DISTRICT
COURT, EASTERN DISTRICT OF MICHIGAN,
SOUTHERN DIVISION

Caption: GEORGE JUSTICE MOOR V CITY OF
AUBURN HILLS, et al

Case No. 87CV71293DT

(page 6)

*** The immunity "is pierced only if there clearly was not probable cause at the time the arrest was made. The officers must establish that they acted in good faith and had reasonable belief that their conduct was permissible. *** Plaintiff *** was ordered on at least two occasions to leave the site where Nolin was questioning his son and refused to do so. This fact alone establishes a good faith basis for Nolin's belief that he had probable cause to arrest plaintiff for interfering with a police officer. The jury's guilty verdict

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although overturned, also supports a finding of good faith. *** We conclude that

JUDGEMENTS TO BE REVIEWED

Nolin is shielded by qualified immunity.

Plaintiff also alleges a claim under the eighth amendment. *** The conduct alleged in the complaint although certainly not condonable, is not such that "shocks the conscience" of the court. This claim must also be dismissed.

Dated: June 6, 1989

Issuing court: UNITED STATES COURT OF
APPEALS FOR THE SIXTH CIRCUIT

Caption: GEORGE J. MOOR V. CITY OF AUBURN
HILLS; AUBURN HILLS POLICE DEPARTMENT
ROBERT F RAYNOR; MAURICE JAMES NOLIN;
JAMES P SHEEHY

Case No. 88-1685

Having carefully reviewed the record and having considered the arguments presented in the briefs, we affirm the judgment of the district court for the reasons stated in the district court's orders dated July 13, 1987 and May 27, 1988.

ORDERS ON REHEARING

District Court Record Entry No. 110

Dated: June 6, 1988

Re: May 27, 1989 order (nr#108)

Issuing Court: UNITED STATES DISTRICT
COURT, EASTERN DISTRICT OF MICHIGAN,
SOUTHERN DIVISION.

Caption: GEORGE MOOR V CITY OF AUBURN
HILLS, et al

Case No. 87CV71293DT

Petitioner's motion is denied.

Dated: July 19, 1989

Re: June 6, 1989 order

Issuing court: UNITED STATES COURT OF
APPEALS FOR THE SIXTH CIRCUIT.

Caption: GEORGE J MOOR V. CITY OF AUBURN
HILLS, et al

Case No. 88-1685

The panel has further reviewed the petition for rehearing and concludes that the issues raised in the petition were fully considered upon the original submission and decision of the case. Accordingly, the petition is denied.

AFFIDAVIT OF SERVICE

Petitioner, pursuant to Rule 28.5(c) affirms that he mailed to respondent's counsel a copy of this Appendix to the address and on the date noted on the accompanying Receipt for Certified Mail.

P 094 123 739

RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED
NOT FOR INTERNATIONAL MAIL
(See Reverse)

Sent to	RICHARD PATTERSON	
Street and No	10 W. Square Lake	
P.O. State and ZIP Code	SUITE 300 Bloomfield Hills, MI	
Postage	48013 -	\$ 45
Certified Fee		\$ 75
Special Delivery Fee		
Restricted Delivery Fee		
Return Receipt showing to whom and Date Delivered		
Return Receipt showing to whom Date, and Address of Delivery		
TOTAL Postage and Fees		\$ 130
Postmark or Date	DETROIT, MI 30 JUL 1989	

PS Form 3800, June 1, 15

Justice Moor